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On behalf of the International Brotherhood of Teamsters, I want to thank Chairman Lindberg and the House Labor Committee for the opportunity to discuss this incredibly important issue. I also wish to commend Representative Kandrevas and his colleagues for sponsoring House Bill 5962 – the most comprehensive proposed worker misclassification legislation in the nation.

For the Teamsters Union, there is no state issue more important to our 1.4 million members than employee misclassification, an egregious practice that unfairly provides bad-acting employers a competitive edge over their competitors. For those not familiar, employee misclassification is a practice where an employer intentionally misclassifies workers as independent contractors in an effort to avoid employee-related expenses, ultimately saving upwards of 30% in worker expenses.

This practice has been used for more three decades, and federal statistics suggest that worker misclassification continues to increase in its

frequency. A 1984 IRS report suggested 15% of independent contractors were misclassified, costing the federal government $1.6 billion annually. More recent studies suggest that no less than five million independent contractors – or 48% of all independent contractors nationwide – are considered misclassified employees. In fact, statistics also show that this practice is increasing at no less than 7% annually. I would also stress, as highlighted by a 2009 Government Accountability Office report, the actual extent of this problem is widely unknown and all statistics should be considered conservative estimates.

Most tragically, misclassified workers lose out the most due to this egregious practice. A 2000 United States Department of Labor report indicated bad-acting employers misclassify workers to save on expenses and to avoid liability in workplace injury and disability claims. Therefore, misclassified workers are essentially left to their own devices without the proper workplace protections that have been secured in this country over the last century.

As independent contractors, misclassified workers are excluded from numerous federal protections under the National Labor Relations Act, Fair Labor Standards, OSHA, discrimination laws, and even the Americans with Disabilities Act. Misclassified

employees are not protected under state workers' compensation systems, unemployment insurance, and disability benefits. Meanwhile, these workers are also forced to pay out of pocket all business-related expenses, receive up to 25% less in wages versus their employee counterparts, and rarely see health care or retirement benefits. Despite these losses, misclassified workers are treated day in and day out as if they are employees.

The practice of worker misclassification has traditionally been considered a construction-specific issue, but evidence suggested this practice is common in almost every industry, including package delivery, film, healthcare, port and custodial industries. In fact, many Fortune 500 companies have also been implicated in this practice. The IRS ordered Microsoft to pay $97 million for misclassifying workers between 1996 and 2000. Additionally, Merrill Lynch settled a 2005 class action lawsuit for misclassifying 3,000 workers, costing the company $37 million. Finally, Memphis-based Federal Express' subsidiary, FedEx Ground, has also been implicated in the practice.

With small businesses and large corporations directly charged with misclassifying workers, federal and state governments experience a serious challenge regarding this egregious practice. It is estimated that

this practice costs the federal government $4.7 billion annually in lost tax revenues. As mentioned earlier, this figure should be considered a conservative estimate. Meanwhile, state governments also lose billions of dollars annually in uncollected taxes and worker compensation premiums. More than thirty-five states have in some capacity reviewed the practice. Additionally, fourteen have placed fixed dollar amounts on the cost of this practice, including lost income and unemployment taxes as well as worker compensation premiums. Just briefly, those figures are as follows:

> Colorado – $40 million; Connecticut – $82 million; Illinois – $346 million;
> Maine – $10.8 million; Maryland – $25 million; Massachusetts – $278 million; Missouri – $28.8 million; Nebraska - $18 million; New York – $682 million; Nevada – $8 million; Pennsylvania – $281 million; Ohio – $890 million; Rhode Island – $49.8 million; and, Washington State – $274 million; and, Michigan - $203.5 million.

Compiled through state investigations and studies, these fifteen states collectively lose more than $3.2 billion annually due to worker misclassification, ranging again from lost income and unemployment taxes to workers compensation premiums.

Recognizing that bad-acting employers are clearly cheating the tax system at the expense of workers, their competitors, and state governments, policy-makers and elected officials throughout the country have pro-actively looked to potential solutions on the issue. Governors in many states, including Maryland and Maine in 2009, signed executive orders creating task forces to address the issue. Meanwhile, state legislators have also taken on legislative remedies, as was done in Colorado and Oregon. Last month, the non-partisan unicameral Nebraska state legislature also passed a major piece of legislation to crack down on this egregious practice – a bill later signed in to law by a Republican Governor. Departments of labor and taxation have aggressively begun reviewing potential misclassification instances in their annual audits of companies. Finally, Attorneys General have been extremely aggressive at reviewing this practice by specific companies.

At the federal level, President Obama's FY2011 budget calls for increase scrutiny of worker misclassification which could yield the federal government up to $7 billion over the next decade. Additionally, the IRS has begun auditing thousands of companies across the country to ensure they comply with federal and state laws. Finally, Congress introduced legislation last month which considers the

misclassification of workers to be a violation under the federal Fair Labor Standards Act.

By enacting House Bill 5962, the State of Michigan will once again show its leadership in restoring fairness – to the state, its businesses, and its workers. HB-5962 properly presumes employee status while ensuring that an employer's day-to-day control over a worker is the preeminent factor in determining whether an employee should be classified as an independent contractor.

Additionally, the penalties included in this legislation will serve fair warning to employers to ensure workers are properly classified. As I have advocated throughout the country, states must continue to pass legislation with strong financial penalties and otherwise to ensure that bad-acting employers no longer receive a financial edge versus competitors.

I commend this committee again for considering this pivotal piece of legislation. With states struggling in the face of the greatest economic recession in generations, enacting HB-5962 will ensure the state re-coups much-needed revenues while restoring the proper level of fairness to businesses and workers alike.